

transmittal to the Director. The application shall describe the proposed variation and set forth the reasons for it. Variations may not be employed until the application is approved, except when the emergency requires immediate action to correct a situation that is threatening to life or property. Corrective action may then be taken concurrent with the filing of the application and notification of the Director via telephone.

(c) *Retention of approved variations.* The licensee or permittee shall retain, as part of his records available for examination by ATF officers, any application approved by the Director under this section.

§ 555.23 List of explosive materials.

The Director shall compile a list of explosive materials, which shall be published and revised at least annually in the FEDERAL REGISTER. The “List of Explosive Materials” (ATF Publication 5400.8) is available at no cost upon request from the ATF Distribution Center (See § 555.21).

[T.D. ATF-290, 54 FR 53054, Dec. 27, 1989, as amended by T.D. ATF-446, 66 FR 16602, Mar. 27, 2001; ATF-11F, 73 FR 57242, Oct. 2, 2008]

§ 555.24 Right of entry and examination.

(a) Any ATF officer may enter during business hours the premises, including places of storage, of any licensee or holder of a user permit for the purpose of inspecting or examining any records or documents required to be kept under this part, and any facilities in which explosive materials are kept or stored.

(b) Any ATF officer may inspect the places of storage for explosive materials of an applicant for a limited permit or, in the case of a holder of a limited permit, at the time of renewal of such permit.

(c) The provisions of paragraph (b) of this section do not apply to an applicant for the renewal of a limited permit if an ATF officer has, within the preceding 3 years, verified by inspection that the applicant's place of storage for explosive materials meets the requirements of subpart K of this part.

[ATF No. 1, 68 FR 13781, Mar. 20, 2003]

§ 555.25 Disclosure of information.

Upon receipt of written request from any State or any political subdivision of a State, the regional director (compliance) may make available to the State or political subdivision any information which the regional director (compliance) may obtain under the Act with respect to the identification of persons within the State or political subdivision, who have purchased or received explosive materials, together with a description of the explosive materials.

§ 555.26 Prohibited shipment, transportation, receipt, possession, or distribution of explosive materials.

(a) *General.* No person, other than a licensee or permittee knowingly may transport, ship, cause to be transported, or receive any explosive materials: *Provided*, That the provisions of this paragraph (a) do not apply to the lawful purchase by a nonlicensee or nonpermittee of commercially manufactured black powder in quantities not to exceed 50 pounds, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16), or in antique devices as exempted from the term “destructive device” in 18 U.S.C. 921(a)(4).

(b) *Holders of a limited permit.* No person who is a holder of a limited permit may—

(1) Transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials;

(2) Receive explosive materials from a licensee or permittee, whose premises are located outside the State of residence of the limited permit holder; or

(3) Receive explosive materials on more than 6 separate occasions, during the period of the permit, from one or more licensees or permittees whose premises are located within the State of residence of the limited permit holder. (See § 555.105(b) for the definition of “6 separate occasions.”)

(c) *Possession by prohibited persons.* No person may ship or transport any explosive material in or affecting interstate or foreign commerce or receive or possess any explosive materials which have been shipped or transported in or

affecting interstate or foreign commerce who:

(1) Is under indictment or information for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802) and § 555.11);

(4) Has been adjudicated as a mental defective or has been committed to a mental institution;

(5) Is an alien, other than an alien who—

(i) Is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101)); or

(ii) Is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

(A) Is a foreign law enforcement officer of a friendly foreign government, as determined by the Attorney General in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

(B) Is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a) of the Act, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

(C) Is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials

is in furtherance of the military purpose; or

(D) Is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

(6) Has been discharged from the armed forces under dishonorable conditions; or

(7) Having been a citizen of the United States, has renounced citizenship.

(d) *Distribution to prohibited persons.* No person may knowingly distribute explosive materials to any individual who:

(1) Is under twenty-one years of age;

(2) Is under indictment or information for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(3) Is a fugitive from justice;

(4) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802) and § 555.11);

(5) Has been adjudicated as a mental defective or has been committed to a mental institution;

(6) Is an alien, other than an alien who—

(i) Is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101)); or

(ii) Is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

(A) Is a foreign law enforcement officer of a friendly foreign government, as determined by the Attorney General in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

(B) Is a person having the power to direct or cause the direction of the

§ 555.27

management and policies of a corporation, partnership, or association licensed pursuant to section 843(a) of the Act, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

(C) Is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

(D) Is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

(7) Has been discharged from the armed forces under dishonorable conditions; or

(8) Having been a citizen of the United States, has renounced citizenship.

(e) See § 555.180 for regulations concerning the prohibited manufacture, importation, exportation, shipment, transportation, receipt, transfer, or possession of plastic explosives that do not contain a detection agent.

[ATF No. 1, 68 FR 13781, Mar. 20, 2003]

§ 555.27 Out-of-State disposition of explosive materials.

(a) No nonlicensee or nonpermittee may distribute any explosive materials to any other nonlicensee or nonpermittee who the distributor knows or who has reasonable cause to believe does not reside in the State in which the distributor resides.

(b) The provisions of this section do not apply on and after May 24, 2003.

[ATF No. 1, 68 FR 13782, Mar. 20, 2003]

§ 555.28 Stolen explosive materials.

No person shall receive, conceal, transport, ship, store, barter, sell, or dispose of any stolen explosive materials knowing or having reasonable

27 CFR Ch. II (4–1–10 Edition)

cause to believe that the explosive materials were stolen.

§ 555.29 Unlawful storage.

No person shall store any explosive materials in a manner not in conformity with this part.

§ 555.30 Reporting theft or loss of explosive materials.

(a) Any licensee or permittee who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephoning 1-800-800-3855 (nationwide toll free number) and on ATF F 5400.5 (formerly Form 4712) in accordance with the instructions on the form. Theft or loss of any explosive materials shall also be reported to appropriate local authorities.

(b) Any other person, except a carrier of explosive materials, who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephoning 1-800-800-3855 (nationwide toll free number) and in writing to the nearest ATF office. Theft or loss shall be reported to appropriate local authorities.

(c) Reports of theft or loss of explosive materials under paragraphs (a) and (b) of this section must include the following information, if known:

(1) The manufacturer or brand name.

(2) The manufacturer's marks of identification (date and shift code).

(3) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, etc.).

(4) Description (dynamite, blasting agents, detonators, etc.) and United Nations (UN) identification number, hazard division number, and classification letter, e.g., 1.1D, as classified by the U.S. Department of Transportation at 49 CFR 172.101 and 173.52.

(5) Size (length and diameter).

(d) A carrier of explosive materials who has knowledge of the theft or loss of any explosive materials shall, within 24 hours of discovery, report the theft or loss by telephoning 1-800-800-3855 (nationwide toll free number). Theft or loss shall also be reported to appropriate local authorities. Reports of theft or loss of explosive materials by